

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. RPU-00-1 (TF-00-64)
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ORDER OVERRULING OBJECTION

(Issued May 31, 2000)

PROCEDURAL HISTORY

On March 15, 2000, U S WEST Communications, Inc. (U S West), filed a proposed tariff identified as TF-00-64 in which U S West proposes to deaverage its wholesale and retail rates in Iowa. U S West generally proposes to change its wholesale rates for the loop unbundled network element (UNE), to decrease retail rates for some business basic and nonbasic services, and to increase retail rates for some residential basic services.

On April 4, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to the tariff. Consumer Advocate asserts that some or all of the retail rate increases proposed by U S West are prohibited by law because U S West is participating in voluntary price regulation pursuant to Iowa Code § 476.97 (1999). That statute prohibits increases in basic communications service rates to reflect unbundling while operating under a price plan.

On April 12, 2000, U S West filed a response to the Consumer Advocate's objection, arguing that Section III.G of the U S West price plan, approved by the Utilities Board (Board) by order issued September 28, 1998, in Docket No. RPU-98-4, specifically contemplates and permits retail rate changes for exogenous factors, which may include UNE rate deaveraging. Section III.G provides:

G. Increases or Decreases Due to Exogenous Factors

The Board, after reasonable notice and opportunity for hearing, may prescribe proportional increases or decreases for appropriate BCS [basic communications services] and NCS [nonbasic communications services] to reflect in prices, changes in revenues, expenses and investments, due to exogenous factors beyond the control of U S WEST.

Proceedings before the Board to deaverage rates for unbundled network elements and related proceedings concerning support for universal service, or significant structural changes in the local service market due to competition that affect U S WEST's revenues, expenses, and investments may be considered by the Board to be exogenous factors that warrant a change in U S WEST's rate design. The preceding sentence shall not be construed to limit the possible types of exogenous factors that may support a change in rates.

On April 14, 2000, the Board issued an order suspending the tariff and docketing the matter as a formal contested case proceeding. In that order, the Board indicated it would treat Consumer Advocate's price plan objection as a motion to dismiss and established a briefing schedule. Initial briefs were filed by U S West and Consumer Advocate on April 24, 2000, and reply briefs were filed on May 8, 2000.

SUMMARY OF ARGUMENTS

1. Consumer Advocate

Consumer Advocate argues U S West proposes three types of rate adjustments in this proceeding: first, geographic deaveraging of UNE loop prices; second, decreases in certain retail rates for business customers; and third, increases in prices for certain residential basic communications services. Consumer Advocate argues the third proposed change is prohibited by law.

Iowa Code § 476.97(3)"a"(4) provides that a carrier that elects price regulation in Iowa, and that does so by reducing its initial rates for basic communications services (rather than by having a rate proceeding to set those initial prices), "shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling." When U S West opted for price regulation, it chose to reduce its rates by 3 percent to establish its initial prices, rather than rely upon a traditional rate proceeding to set those prices. As a result, Consumer Advocate argues, the quoted statute prohibits increases in basic rates resulting from U S West's proposed unbundling of wholesale services.

Consumer Advocate also argues that unbundling of wholesale services cannot be considered an exogenous factor because the requirement to unbundle services and the option of price regulation were adopted as a part of the same legislation See 1995 Iowa Acts ch. 199. Because the two provisions were enacted as part of the same legislative act, unbundling cannot be considered to be an exogenous factor,

that is, one that is the result of events beyond the control and contemplation of U S West at the time it opted to enter into price regulation.

2. U S West

U S West argues that its price plan, as approved by the Board in Docket No. RPU-98-4, specifically contemplates that deaveraging of UNE prices may be considered an exogenous factor warranting a change in U S West's retail rate design. U S West also argues that the FCC regulation which requires geographic deaveraging of UNE rates represent an event that originated outside of U S West and was beyond the control of the company, making it an exogenous factor.

U S West also relies on language from the Board's order approving U S West's price plan. In that order, the Board said:

The Board does recognize, however, that deaveraging of rates for unbundled network elements may occur during the term of the price plan. In addition, other competition-related changes may occur that will create a need for the Board to consider rate-rebalancing changes. The Board will address this situation by adding the following additional paragraph [the second paragraph of Section III.G, quoted above] to the exogenous factors provisions in Section III.G.

Re: U S WEST Communications, Inc., Docket No. RPU-98-4, "Order Approving Settlement And Modifying Price Plan" at page 10 (issued September 28, 1998).

U S West argues that this language makes it "inconceivable" that the price plan should prohibit the retail price increases it has proposed.

Finally, U S West argues Consumer Advocate has confused the terms "unbundling" and "deaveraging." U S West defines unbundling as the act of making

the physical and functional elements of the telecommunications network available for individual purchase, while “deaveraging,” according to U S West, is the process of changing averaged rates to more closely reflect the actual cost of providing service to customers located in different areas. Because U S West has already unbundled its services and is now proposing only to deaverage the rates for those services, U S West believes the statutory prohibition of unbundling as an exogenous factor is irrelevant.

ANALYSIS

The Board finds U S West’s proposed changes are the type of proposal the Board was contemplating when the Board added the second paragraph to Section III.G of U S West’s price plan. This is not an unbundling docket; U S West’s network elements are already unbundled and available to competitors for purchase on an individual basis. Instead, this proceeding is to consider geographic deaveraging of the rates for U S West’s UNEs, as required by 47 C.F.R. § 51.507(f) (2000). That FCC regulation clearly originated outside of U S West and is not subject to U S West’s control in any meaningful sense of the word. As such, it is an exogenous factor that permits consideration of changes to U S West’s retail prices, as contemplated in the Board’s order approving the price plan.

This does not mean the Board has decided that retail prices must be deaveraged at the same time as wholesale rates; that is a question the Board will answer only after it has heard the evidence and the arguments of the parties. The

Board's ruling today is only that retail rate changes associated with UNE rate deaveraging, including possible increases in rates for basic communications services, are not prohibited as a matter of law by U S West's price plan and Iowa Code § 476.97(3)"a"(4).

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The objection filed in this docket by the Consumer Advocate Division of the Department of Justice on April 4, 2000, arguing that U S West Communications, Inc.'s proposed increases to prices for basic communications services are prohibited by law, is overruled.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of May, 2000.